IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23-1-2007

Coram

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.A.No.1061 of 2002

V.N.Damani ... Appellant [Petitioner].

Vs.

1. The Arbitrator,
Divisional Engineer,
(ESP-1), Chennai Telephones,
No.7, Kush Kumar Road,
Chennai - 600 036.

2. The Deputy General Manger,
North East,
Chennai Telephones,
Chennai. ... Respondents [Respondents]

This Writ Appeal has been filed under Clause 15 of Letters Patent against the order of the learned single Judge in W.P.No.11386 of 1999 dated 1.3.2002

WP.No.11386/1999: Petition presented under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to Arbitration No.Arb/Esp/2/1999-2000 dt. 11.5.1999 on the file of the Arbitrator, Divisional Engineer [Esp-1] Chennai Telephones [the 1st respondent herein] and to quash the same and forbear the Deputy General Manager[North East] Chennai Telephones Chennai, the [Second Respondent herein] from demanding the petitioner herein] from demanding the petitioner to pay the Bill dated 7.2.1990 in respect of the Telephone No.585678[Old No.30678]

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For Appellant : Mr.S.Subbiah
For Respondents : Mr.Badrinathan
for Mr.P.Wilson
Asst.Solicitor General of India
for R.2.
No Appearance for R.1

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J U D G M E N T

N. PAUL VASANTHAKUMAR, J.

This writ appeal is filed against the order of the learned single Judge dated 1.3.2002 in W.P.No.11386 of 1999, dismissing the writ petition filed by the appellant herein and upholding the award of the first respondent dated 11.5.1999, wherein the arbitration petition filed by the appellant was dismissed.

2. The brief facts necessary for disposal of this writ appeal are that the appellant was the subscriber to telephone No.30678, which was subsequently changed to 585678. The said telephone connection was originally installed at 122 (now 357) Mind Street and now shifted at No.13, Rangan Street, T.Nager, Chennai-17 with telephone No.4335009. According to the appellant, he had STD facility and until bill dated 7.8.1989, the bill amount was less than Rs.2,600/- for two months and on 7.12.1989, a bill was received by the appellant for a sum of Rs.18,706/-. The said bill was challenged by the appellant in W.P.No.331 of 1990 and this Court directed the appellant to go for arbitration. Again by bill dated 7.2.1990 appellant was directed to pay a sum of Rs.10,748/- and the same was also challenged in W.P.No.2638 of 1990, which was also directed to be decided in arbitration proceeding.

3. Thereafter, according to the appellant, he made an arbitration claim before the first respondent, who passed an award on 11.5.1999 dismissing the arbitration claim petition filed by the appellant. The said order was challenged in W.P.No.11386 of 1999 by contending that in spite of two telephone numbers given by the appellant through which STD calls were received, the department failed to verify the same and prove the tampering of telephone number of the appellant by somebody else and due to tampering only huge amount is demanded from the appellant in the said bills. According to the appellant, the enquiry conducted on 24.3.1999 was improperly conducted and the appellant's claim should have been verified by the Vigilance Cell and even after the withdrawal of STD facility by the appellant, subsequent bills also showed the usage of STD facility and the same was not considered by the first respondent. Hence the award of the first respondent is sought to be quashed in the writ petition.

4. The writ petition was heard by the learned single Judge and the same was dismissed on 1.3.2002 on the ground that the earlier writ petitions filed by the appellant, challenging the bills were dismissed with a direction to go before the arbitrator and if at all the appellant is aggrieved, he could have challenged the award of the arbitrator under section 34 of the Arbitration Act. Stating the said reason, the learned judge dismissed the writ petition with costs of Rs.2,000/-.

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5. The learned counsel for the appellant argued that the earlier order passed in the writ petitions filed by the appellant challenging the bills were not decided on merits and only as per the direction given by this Court, appellant approached the Arbitrator by raising arbitration claim and the appellant cannot challenge the award under section 34 of the Arbitration Act as the award passed under section 7B of the Telegraph Act, would not fall as an award in terms of the Arbitration and Conciliation Act, 1996. Hence the learned counsel for the appellant prayed for going into the merits of the case and consider the issue.

6. We have considered the submissions made by the learned counsel for the appellant and perused the claim statement filed by the appellant before the first respondent as well as the counter affidavit filed by the department before the first respondent. It is stated in the counter statement that thorough investigation was made in the excess metering complaints and the appellant's telephone was kept under observation for the period from 5.8.1989 to 8.9.1989; 14.9.1989 to 18.9.1989; 21.10.1989 to 24.10.1989 and during those observations it was found that the claimant was in the habit of making STD calls to Tirunelveli. During the second observation it was found that out of the total 464 call units, 419 call units were STD calls and in the third observation, out of the total 907 call units, 896 call units were STD calls. Taking note of the said observations, department justified the correctness of the bills, which are disputed by the appellant. It is also stated that meter routine test was conducted on 23.11.1989 and it was found working properly and even before the complaint preferred by the appellant, the department kept the telephone under observation for the period from 12.12.1989 to 15.12.1989 and it was found that the claimant was in the habit of making STD calls. Again, the telephone was kept under observation from 20.12.1989 to 23.12.1989 and it was found that the appellant was in the habit of making STD calls to Bikaner and out of the total 64 call units, 34 call units were STD calls. Due to such liberal usage of STD calls, such a huge amount became due from the appellant and therefore there is no substance in the argument of the appellant that there was excess metering or tampering of meter.

7. In the light of the said specific averments contained in the counter affidavit filed by the department before the first respondent and the same having been taken note of by the first respondent while dismissing the arbitration petition filed by the appellant, which is a factual finding, we are unable to find any perversity in the award of the first respondent dated 11.5.1999.

8. The appellant may be right in contending that the earlier writ petitions filed challenging the bills, which were dismissed with a direction to go before the arbitrator may not be a bar for challenging the award of the first respondent. However, the same cannot be a reason to allow the writ petition filed by the appellant, particularly in the light of the factual denial made by the department before the first respondent,

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based on which a clear finding is given by the first respondent.

9. There is no merit in the writ appeal and the writ appeal is dismissed. However, taking note of the fact that the writ petition is not disposed on merits by the learned single Judge, we are of the view that imposing of cost of Rs.2,000/- is unsustainable. Therefore, the portion of the order of the learned single Judge, awarding cost of Rs.2,000/- alone is set aside. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

vr/

To

1. The Arbitrator, Divisional Engineer,
(ESP-1), Chennai Telephones, No.7, Kush Kumar Road,
Chennai - 600 036.

2. The Deputy General Manger, North East,
Chennai Telephones, Chennai.

+ 1 CC To Mr. P.Wilson, Asst. Solicitor General SR NO. 4427

W.A.No.1061 of 2002

bv[co]
gp/2.2.

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